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Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: **STB Ex Parte No. 582, *Public Views on Major Rail Consolidations***

Dear Mr. Williams:

Enclosed for filing on behalf of Norfolk Southern Corporation in the above-referenced proceeding are an original and ten copies of the Statement of David R. Goode. Also enclosed is a computer disk containing a copy of this submission in WordPerfect 7/8/9 format.

Pursuant to the Board's February 17, 2000 decision in this docket, Norfolk Southern hereby advises the Board that its speaker at the scheduled March 7th hearing will be David R. Goode.

Please direct any questions concerning this submission to undersigned counsel. Thank you for your assistance with this matter.

Very truly yours,

G. Paul Moates

G. Paul Moates
Vincent F. Prada

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

STATEMENT OF DAVID R. GOODE

Chairman, President and Chief Executive Officer
Norfolk Southern Corporation

Introduction: Now is Not the Time

I welcome this opportunity to appear before the Board to present my views concerning the present and future structure of the U.S. freight railroad industry and the role that rail mergers and consolidations have played, and properly should play, in promoting a national rail system that is financially self-sustaining and meets the freight shipping needs of a growing economy. It is essential to examine these broad issues now.

Today, Norfolk Southern and other major railroads continue to work hard to implement the most recent round of major rail restructuring transactions that began with the BN/Santa Fe merger. But the recently proposed BNSF/CN combination now threatens to impede or delay achievement of the service benefits promised by the major rail consolidations of the past decade, increase pressure for rail re-regulation and jeopardize the financial strength of the entire railroad industry. If allowed to go forward, the BNSF/CN combination likely would trigger another round of major rail consolidations that will unalterably, and with uncertain effects, change the face of the North American railroad industry. I applaud the Board for its leadership in tackling the important, and difficult, policy issues raised by these developments.

The Board will hear in this proceeding a diversity of views from a broad spectrum of parties interested in the future health of the U.S. rail system. I think we can all agree that we stand today at an important crossroads in the history of our industry. The fundamental choice that the railroads and the Board face is whether now is the time for the next step of railroad consolidation. In my judgment, if the industry starts down this path -- on which BNSF/CN represents a huge first step -- we will be inexorably led in the very near future to a North American railroad system comprised of two large rail systems. Do we want to go down that path? Of more immediate significance, do we need to go down that path now? What dangers and risks lie ahead if we begin that process now? Would any public interest benefits be sacrificed if we do not begin that journey right away?

My message to the Board is a simple one: now is not the time for the rail industry and its customers to suffer through the uncertain and potentially serious adverse effects of another round of major rail consolidations. To the contrary, this may be the worst possible time for further rail consolidation. Railroads and our customers still are adjusting to the most recent round of restructuring transactions. In particular, major railroads (including my own) are working -- some would say struggling -- to achieve the public benefits that we said these transactions would bring and to improve service to our customers. We need -- all of us -- more time to focus our energies and our resources on restoring and improving service, achieving the promise of prior consolidations and fully exploiting existing opportunities for enhanced inter-carrier coordinations, before we consider beginning another round of major rail consolidation transactions.

At Norfolk Southern, all of us are now fully involved, and working hard to improve service and the efficiency of our rail operations. With heroic efforts from all the people of

Norfolk Southern, we have made great strides in alleviating the service difficulties that we experienced in the period following implementation of the Conrail transaction. But we still have improvements to make, both in the quality of the service we provide our customers and in the financial returns we provide our stockholders. The distraction and competitive dislocations of another major railroad consolidation proposal, such as that propounded by BNSF and CN, will inevitably undermine these efforts.

Time is short. Because history amply demonstrates that any new significant rail restructuring initiative will necessarily trigger strategic responses by the other railroads (including Norfolk Southern), the rail industry may be forced down the path of further consolidation. If the BNSF/CN proposal is not withdrawn or otherwise terminated in the very near future -- and by that I mean well before a final Board decision on an anticipated BNSF/CN consolidation application -- it will probably precipitate the next, and most likely final, round of major rail consolidation proposals.

The Current Structure of the Railroad Industry

Any assessment of the future direction of the rail industry necessarily must begin with a review of the industry's current structure, and how we got to where we are. Today, we have a relatively balanced freight rail system in North America. As a result of the last round of major rail restructuring transactions, we now have two major rail systems in the western U.S. (BNSF and Union Pacific), two in the eastern U.S. (CSX and Norfolk Southern), and two in Canada (Canadian National and Canadian Pacific), with numerous regional and short-line carriers linking up with the major trunk-line carriers throughout the continent.

The major rail systems that we have today are stronger and more competitive than the fragmented rail system of decades past, and they can and do provide more timely and better service, at lower cost, than was the case 20, and even ten years, ago. Together with the post-Staggers regulatory scheme, which has allowed railroads to set rates, establish service and invest in physical infrastructure in reliance on the potential to earn a competitive rate of return, rail consolidations and other restructuring transactions (including line sales and abandonments) have been a major factor in the rail industry's improved financial performance.

Rail Service Problems

But these longer-term benefits have not come without short-term sacrifices and costs, some of them quite significant. I have to admit that the restructuring of the U.S. rail industry, particularly during the large consolidations of the past decade, has been disruptive to the industry and to our customers. For a variety of reasons, which include the strains on physical infrastructure from growing traffic volumes and the size and complexity of recent major rail consolidations, recent transactions have been more difficult and time-consuming to implement than prior ones. The Board is familiar with the Western rail service emergency that followed in the wake of the UP/SP merger, as well as with the very significant problems that Norfolk Southern and CSX have had in implementing the Conrail transaction.[1] I certainly do not mean to suggest that every rail merger or consolidation will necessarily result in service failures; far from it. But the fact remains that a number of carriers, including my own, have experienced significant service deficiencies following implementation of consolidations.

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1 No transaction or carrier has been, or is, immune from these implementation issues. Despite BNSF's recent public claims to the contrary, BN and Santa Fe also experienced substantial operating and service problems during the initial implementation of their merger.

We are all familiar, in my case painfully familiar, with the details of the service problems that Norfolk Southern and other railroads have experienced in recent times. These problems are costly to the railroads and to their customers but can, with time and hard work, be overcome. BN and Santa Fe, which came first with their most recent major consolidation, have fully implemented their merger. Union Pacific has largely recovered from its service problems and is now realizing the promised efficiencies of its most recent consolidation, and appears to be well on the path toward remedying the infrastructure deficits that were such a major contributing factor in its service crisis.

With great effort (and, I might say, at significant cost), Norfolk Southern and CSX are also well on their way to restoring efficient, reliable service. The process has been slow -- slower than we would have preferred -- but the progress has been steady. In any event, speaking for Norfolk Southern, I fully expect that we will soon be past our remaining service difficulties and will begin with our customers to reap the service and efficiency benefits that we expected to achieve from the Conrail acquisition -- which, despite the service issues it has raised, has done far more to increase rail-to-rail competition than any railroad consolidation transaction in the history of our industry.

As a result of these events, customer confidence in the rail industry has been shaken. The first priority of the industry -- and of Norfolk Southern -- must be to earn back that confidence and thereby regain financial health. This means improving service for all of our customers, regaining lost business, developing new business and improving returns. That requires time and attention.

Financial Concerns

A potential obstacle to necessary service enhancements is the difficulty faced by the entire railroad industry to earn a rate of return sufficient to attract the capital needed for necessary investments in physical infrastructure. Although we may have had overcapacity in the past, the railroad industry in recent years has seen a surging demand for freight rail service. To maintain and improve the quality of the service we provide customers, and to exploit opportunities for enhanced revenues through diversion of traffic that today moves by truck over the highways (at high public cost), railroads need to invest in maintaining, replacing and expanding our physical infrastructure.

The current structure of the rail industry is one in which the confidence not only of rail customers, but of railroad investors, has been called into question. Railroad stocks have fallen dramatically over the past several months, reflecting growing concern about rail mergers and consolidations and their impact on service, concerns over the potential financial effects of re-regulation proposals now under consideration, and the extent to which current market and regulatory conditions will permit the railroads to conduct their business and price their services in a way that provides a competitive return to investors.[2] In recent weeks and months, I have heard

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2 To give some sense of the urgency of the situation we face today, the market value of the stocks of the six major North American railroads (BNSF, Canadian National, Canadian Pacific, CSX, Norfolk Southern and Union Pacific) has dropped almost <u>$14 billion</u> -- or <u>more than 25 percent</u> -- just since the public announcement of the BNSF/CN consolidation proposal a little more than two months ago. For Norfolk Southern and CSX, this decline in value has come on top of a significant decline in our stock prices following the implementation of the Conrail transaction beginning in June 1999 and the service problems we experienced as a result. Norfolk Southern's market value, as measured by prevailing stock price, has fallen by more than <u>$3 billion</u> since the BNSF/CN announcement. As the industry figures reflect, we are not alone. Both BNSF and CSX have suffered a decline in market value comparable to Norfolk Southern's decline since the BNSF/CN announcement, and the other major railroads have also experienced substantial (continued...)

from numerous railroad investors and securities analysts who are alarmed at the cloud of uncertainty that now hangs over our industry. The markets have already spoken in a loud negative on the prospect of the BNSF/CN proposal and the prospect of more transactions. If we are to meet the challenge of building the rail infrastructure our Nation will need in the years ahead, we must reverse this pattern and restore stability and financial strength to our industry. All of the factors I just mentioned -- service recovery, restoring customer confidence and maintaining pricing and operating freedoms -- are integrally related to this objective.

The Risks Posed By More Major Rail Consolidations

The rail industry today faces many challenges and has much unfinished business. Mergers and consolidations have played a critical role both in the gains the industry has made toward a more efficient, self-sustaining freight transportation system and, paradoxically, in the service dislocations and financial questions we now confront. It is therefore appropriate to inquire what dangers or risks are created by further major rail consolidation transactions at this point in our industry's history. Those threats must be weighed against the potential benefits (if any) that would be lost if further consolidation -- including the recent BNSF/CN proposal -- were prevented, or even merely postponed for some period of time.

Bad Timing

Some argue that no further major rail consolidations should ever be allowed. But the debate in my judgment should not be phrased in such black-and-white terms. The real and most immediate issue in my judgment is one of timing: would it be in the public interest now for another major rail consolidation such as the BNSF/CN proposal?

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[2](...continued)
drops in their stock prices and market capitalizations.

On this important question, the answer seems clear: this is probably the worst possible time in the rail industry's history for another major rail consolidation. The proposed BNSF/CN combination is inherently destabilizing and comes at a time when the rail industry needs to eliminate uncertainty, restore customer confidence and avoid further turmoil. Another major rail restructuring transaction now would have just the opposite effects. Until the industry fully adjusts to the rail consolidations of the 1990's, allowing any major rail consolidation transaction to proceed would set in motion a series of developments that, however well-meaning or even justified in terms of the interests of particular railroad managements or shareholders, may not serve the long-term interest of the public in a sound rail transportation system.

Final Round of Mergers

Let me add my voice to a point that has already been made by others in recent months: if the BNSF/CN transaction goes forward as currently proposed, it will trigger another round of major railroad consolidations that, in all likelihood, will rapidly produce a North American rail system dominated by two large railroads. This prediction is supported both by history and by logic.

As to history, one need only look at the record of major rail consolidations that occurred during the late 1970's, 1980's and 1990's, in which each announcement of a major rail consolidation proposal triggered a responsive transaction. These responsive transactions were motivated by strategic and business considerations, not simple gamesmanship. Railroading is a network industry and exhibits substantial economies of scale, scope and density. What we sell to our customers is, in important respects, market coverage in a geographic sense. If we cannot offer our customers the same sort of market coverage as our railroad competitors, and take advantage of the same route efficiencies and opportunities for single-line service, we lose business and, ultimately, put shareholder value at risk. A railroad like Norfolk Southern simply cannot afford for financial and strategic reasons to stand by while its competitors through mergers or consolidations achieve significantly greater size, service reach and financial strength. Railroad officers also have a fiduciary duty to maximize shareholder value. Financial, competitive and service considerations thus impel railroads to respond strategically to major rail consolidations that upset the competitive balance in the industry.

I can only speak for Norfolk Southern, but I am as certain as I can be that, if the proposed BNSF/CN consolidation is not rejected or stopped in the very near future, Norfolk Southern (and I believe other railroads) will be compelled to pursue their own responsive consolidations. I have serious doubts if my company (or the other major railroads) -- much less our rail customers -- are fully prepared for the dislocations that would be associated with another major restructuring transaction, but we would have no choice in the matter. We simply cannot afford to let a combined BNSF/CN system offer services on a scale we cannot match. Already there has been much speculation about BNSF/CN entry into traditional eastern markets where we would have to respond and BNSF and CN themselves have prepared maps illustrating this market expansion. How could we possibly stand by and accept this adverse change in business?

Notwithstanding this business need to react to a BNSF/CN consolidation, triggering another, likely final, round of major railroad consolidation transactions <u>at this time</u> would be potentially harmful to the public interest in adequate, competitive rail service. This is so for several reasons.

Focus on Service

As an initial matter, a series of major rail consolidations would necessarily divert industry attention and resources from other pressing matters. The rail industry -- and Norfolk Southern -- have much to do to improve service and train operations over existing rail networks. Implementing the Conrail transaction has required a full-court press by my entire management team as well as the efforts of thousands of dedicated Norfolk Southern employees in the field. The announcement of the BNSF/CN consolidation proposal has been more than a distraction in this effort. A large amount of my time (and that of my management team and outside advisors) over the past two months has been spent considering possible reactions, including other possible rail consolidation proposals. Lawyers and investment bankers are very busy. If we are forced to devote further resources to BNSF/CN or to other responsive consolidation transactions (whether our own or those of other major rail carriers), ongoing service efforts will necessarily be diverted. The focus of our energies and resources (including financial) on how better to serve our customers and manage our existing network will be shifted to the effects of BNSF/CN or other transactions on our operations and business and how we might restructure our network to mitigate the adverse effects. It is impossible to quantify the costs, but let there be no doubt that the distraction of another round of major rail consolidations would inevitably threaten our efforts to achieve the benefits of the Conrail transaction for all our constituents

Deferred Interline Service Improvements

Unleashing a new round of major rail consolidations would also erode recently renewed industry efforts to improve operating coordinations and service through inter-carrier initiatives not requiring full merger. Part of this would be due simply to the diversion of carrier resources from inter-carrier coordinations to merger planning and analysis. But the pendency of major rail consolidation proposals also skews negotiations over inter-carrier initiatives.

The major railroads, including Norfolk Southern, are presently engaged in a variety of important inter-carrier initiatives to improve service. For example, the major railroads are actively pursuing a comprehensive effort to improve rail operations in and around the Chicago terminal area and to assist the City of Chicago in achieving certain urban development objectives. The industry is also engaged in intensive negotiations with the regional and short-line railroads over various outstanding operating and competitive issues, and in cooperative efforts to use electronic commerce to streamline customer interactions. All of these ongoing projects will become wrapped up in the debate over BNSF/CN and other possible rail consolidations, and progress on them will inevitably slow.

Other inter-carrier coordinations will not be pursued, or pursued as quickly or aggressively, if the BNSF/CN or any other major rail consolidation proposal goes forward at this time. Simply put, the incentives for working together to improve traffic interchanges and address other industry-wide operating and service issues are undermined by a destabilizing merger proposal that would cause numerous shifts in traffic patterns, throw future planning efforts into a state of uncertainty and inject into every significant business decision the complicating issue of present and possible future rail consolidation impacts.

Re-Regulation Dangers

Another round of major rail consolidations now could increase the chances that the rail industry will be saddled with burdensome, potentially crippling, new regulatory requirements, ranging from various forms of forced access to "bottleneck" rate regulation and the like.

Customer groups are lobbying for these regulatory changes, now citing the proposed BNSF/CN combination and other transactions that may follow as a ground for radical changes in the way railroad rates and services are regulated.

These proposals for re-regulation make no more sense today than they did before the announcement of the BNSF/CN proposal. The suggestion that railroad mergers have somehow reduced direct rail competitive options for customers is wrong, and unfairly denigrates the careful efforts of the ICC and this Board to impose competition-preserving conditions in their approvals of major rail consolidation transactions. Right or wrong, another round of major rail consolidations now strengthens the resolve of those who would subject the industry to a new regime of rate regulation. And, right or wrong, this is a matter that no one involved in or concerned about the future health of the rail industry can ignore.

The introduction of forced access and other forms of re-regulation would be devastating to this industry, and on its ability to raise capital for investments in physical infrastructure necessary for improved services. The likely effect of another round of major rail consolidations in helping to bring about re-regulation of the industry is itself a powerful reason not to begin that process now. Ultimately, I still do not think that Congress or the Board would adopt these re-regulation proposals. Nonetheless, the BNSF/CN proposal, and concerns about the next wave of rail consolidations it may engender, recast the entire debate about re-regulation and introduce additional uncertainty -- within both the customer and financial communities -- about the future condition of the railroad industry, and in fact they already are imposing immediate adverse costs for all railroads.

Adverse Impacts on Rail Service

Last, and perhaps most significant, another round of major rail consolidation transactions now would pose a threat to service, at least for some period of time. If recent history teaches us anything, it is that problems at one point can have ripple effects throughout the North American rail network. And we know that the railroads have suffered through significant service problems in the past several years. Interjecting another major rail consolidation, and the resulting shift in traffic patterns and flows, at this time could well cause new service disruptions. As we at Norfolk Southern learned the hard way, freight rail operating patterns -- particularly in this time of strained capacity in our rail infrastructure -- are more fragile than many of us in the rail industry have thought. Among the shipping community, service disruption is considered a serious risk, and personally I share that concern.

The potential adverse effects of additional rail consolidations on service quality have several sources. At the most basic level, there is concern that a consolidation as large and as complicated as BNSF/CN may produce service disruptions on the parties' own systems, with potential ripple effects on other carriers. Although BNSF and CN have flatly and confidently declared that there is no possibility that they will experience any service problems in implementing their proposed consolidation, the truth is that there is a risk -- indeed, a significant risk given recent industry experience -- that the transaction will give rise to service dislocations.

BNSF and CN can hardly claim with credibility that they have been immune from the service disruptions associated with recent rail merger transactions. BN and Santa Fe experienced significant problems during their merger; in fact, Norfolk Southern and other carriers assisted BNSF in addressing those issues, among other things by agreeing to perform blocking of trains for BNSF when it could not handle them and agreeing to interchange traffic with BNSF at different points so as to accommodate their service difficulties. (BNSF also assisted us when we recently experienced service difficulties following implementation of the Conrail transaction.)

Am I predicting that BNSF and CN will experience service disruptions in implementing their proposed consolidation (if approved)? Not at all. What I am saying is that it strains reality to suggest that there are not serious and legitimate concerns about potential service problems. I know from personal experience that no matter how confident a management team may be that planning has covered all possibilities, there is nevertheless the very real potential for surprise and miscalculation. These concerns counsel caution and careful preparation before we proceed now with another major rail consolidation.

Even if BNSF and CN (or for that matter any proponents of another major rail consolidation transaction at this time) could realistically deliver on a promise that their consolidation will have no adverse service impacts on their customers, the same cannot necessarily be said about the service impact on <u>other</u> carriers. A transaction like BNSF/CN would, everyone knows, cause significant shifts in traffic flows. Such traffic shifts would require significant alterations in our train operations, and would hamper our ability to improve the fluidity of our own network and thereby to bring about more of the benefits we promised in the Conrail transaction. Similarly, major changes in train operations at common points, such as Chicago or Buffalo, for example, would have effects felt throughout our rail system and those of other carriers.

Another threat to the adequacy of rail service posed by the BNSF/CN proposal is more subtle and more difficult to quantify, but still potentially significant. The BNSF/CN combination threatens to take substantial amounts of freight traffic, and thus revenues, away from other carriers, including potentially significant traffic volumes (and revenues) of Norfolk Southern in certain markets we serve. These traffic and revenue losses could reduce traffic densities on certain non-core lines and, as a result, force the remaining traffic to bear a larger cost burden (including the cost of necessary infrastructure maintenance and improvement), a burden that this traffic may not be able to bear. In addition, traffic and revenue losses could directly affect our ability to justify continued investment in existing or expanded infrastructure -- including the investment we will need to make to achieve the public benefits we anticipated from the Conrail transaction. These impacts will be felt not so much on our core lines as on secondary segments in our system, but these facilities are of great importance, particularly to local shippers.

No Significant Losses From Foregoing or Postponing Major Rail Consolidations

Embarking on a new round of major rail consolidations at this time would, as I have said, pose very substantial risks and dangers to the rail industry and to the shipping public. But what about the other side of the equation? If, as I am suggesting here, we need to wait until the industry has stabilized and service to customers has improved before considering further major rail consolidations, what (if any) public benefits would be sacrificed and forever lost? And are those benefits so great that it would be worth taking the risks we would necessarily confront by beginning another wave of rail consolidations now?

Even though BNSF and CN have not yet even filed their control application, they have made numerous public statements claiming that their proposed combination will produce public benefits in the form of cost efficiencies (which they say would amount to $300 million annually) and unquantifiable benefits in the form of increased single-line service. These claimed benefits, taken at face value, are not insignificant. But the question is, given the size of the BNSF/CN transaction and the risks that it poses to the industry, would benefits of this magnitude be worth it?

I do not believe that they would be. The claimed benefits are relatively small by comparison with other recent major rail consolidations. And, compared just with the expenses that other carriers (including Norfolk Southern) have incurred to deal with service problems in recent years, they are not so significant as to warrant taking the public policy and service risks that the transaction entails. Thus, even taking BNSF/CN claims at face value, the issue is not even a close call. The benefits, if they exist, can wait, and any benefits that might be lost if further rail consolidations were to be postponed until the industry has stabilized are relatively small in comparison with the potential risks.

Moreover, before assessing whether the BNSF/CN proposal or another major rail consolidation is necessary to achieve the kind of public benefits that BNSF and CN are claiming, the rail industry needs time under the structure that now exists to assess whether some of the benefits that were previously attributed to major rail consolidations can be achieved by means short of merger. The industry is still only beginning to implement the large mergers of the 1990's, most recently our Conrail transaction and CN/IC. With two large rail systems in the East, two in the West and two in Canada, we finally might be able to coordinate our interchanges in a way that achieves many of the benefits of single-line or single-system service (or, using the term that CN and IC dubbed in their recent merger proceeding, "single-line like service"). We have only begun to explore what can be achieved within the new industry structure through marketing alliances, e-commerce and other emerging technologies that may facilitate improved coordination of operations that was earlier possible only through a formal merger. We should be devoting our time, effort and resources to seeing how the present structure of the railroad industry can perform, and what improvements we can accomplish in coordinating operations by means short of full merger, before we take the next step down the path toward the final consolidation of the rail industry into two large systems. Only after we have made a sustained effort in pursuing these unexhausted opportunities for inter-carrier coordinations can we (or the Board) confidently determine if further railroad consolidation would be in the public interest.

In sum, the claimed benefits of BNSF/CN or any other major rail consolidation at this time, at least in the short-term, are simply not so great that we cannot live without them if we put off further restructuring until the condition of the industry, the quality of rail service to our customers and the confidence of our investors have stabilized. Whatever these public benefits might be, postponing them is a small price to pay to avoid the dangers and risks that further consolidation at this time poses for the industry and its customers.

Conclusion

The case I have been making in this testimony is for a temporary suspension of further major rail consolidation transactions until the current industry structure becomes more stable and service has improved, and until the confidence of the shipping and financial communities has returned. The obvious question is: how long should we wait? Given the myriad considerations that enter into the calculus, and the inherent inability anyone has to predict the future, I cannot offer a definite or precise answer. Knowing the industry as I do, and having spent a great deal of time over the past two months talking with railroad executives, financial and legal advisors, government officials and, of course, our customers about these very issues, the best judgment I can offer is that the railroad industry needs an extended period of time -- years, not months -- to adjust to the current structure, improve service, and restore shipper and investor confidence. We need that time, and we need to know soon if we will have it. Whatever the duration, as an industry we need now to know we have a window to improve things for our customers and our investors.